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LEROY D. BACA, SHERIFF

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



June 28, 2005

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**RESPONSE TO THE BOARD CONCERNING THE
SUPREME COURT RULING ADDRESSING MEDICAL
MARIJUANA AND PROPOSITION 215**

On June 14, 2005, your Board directed the Los Angeles County Sheriff's Department to report "... on the implications of the Supreme Court decision in *Gonzales v. Raich* for the implementation of Proposition 215 in Los Angeles County."

Proposition 215 was passed by voters in 1996. It recognized that marijuana held medicinal benefits for some patients and it established criteria for the usage of "medical marijuana." Senate Bill 420 was passed in 2003. It further defined the criteria under which patients, and their caregivers, could cultivate and possess limited amounts of medical marijuana. SB420 also authorized the issuance of identification cards to qualified patients and it established a state maintained database so that law enforcement officers could verify a patient's status.

Marijuana is also regulated as a Schedule I Controlled Substance under the Federal Controlled Substances Act (CSA). Schedule I consists of those substances which are prone to abuse and have no recognized medical use. Schedule II contains substances having both a medical use and a potential for abuse.

The CSA criminalizes the possession, cultivation and transfer of marijuana.

California and Federal law conflict in their recognition of the medical usage of marijuana and they cannot be reconciled on this issue.

A Tradition of Service

The Supreme Court Ruling:

In 2002, Butte County Deputy Sheriffs and Agents of the Federal Drug Enforcement Administration (DEA) went to the home of Ms. Diane Monson. They discovered several marijuana plants. The deputies determined that the marijuana was for medicinal purposes and was lawfully possessed under Prop 215. The DEA agents subsequently seized the marijuana.

Ms. Monson and others then filed a lawsuit seeking to block the DEA from enforcing the CSA in medical marijuana cases. The Ninth Circuit Court of Appeal ordered a preliminary injunction against the enforcement of the CSA in medical marijuana cases. It found "a strong likelihood of success on their claim that, as applied to them, the CSA is an unconstitutional exercise of Congress' Commerce Clause authority." The Supreme Court held: "The CSA is a valid exercise of federal power, even as applied to the troubling facts of this case."

The Supreme Court's decision contained lengthy narrative regarding the placement of marijuana on Schedule I of the CSA, particularly in light of evidence showing that it may have medicinal value. The ruling noted that the decision to re-classify marijuana within the CSA did not belong to the judiciary. The final paragraph of the majority decision contained the language:

"As the Solicitor General confirmed during oral argument, the statute authorizes procedures for the reclassification of Schedule I drugs. But even more important than these legal avenues is the democratic process, in which the voices of voters allied with these respondents may be heard in the halls of Congress. Under the present state of the law, however, the judgement of the Court of Appeals must be vacated."

Effects of *Gonzales v. Raich* on California Law:

The decision has no direct effect on either Proposition 215 or SB420. California law remains unchanged as a result of this ruling. California law enforcement officers retain the ability to assess the circumstances under which marijuana is possessed or cultivated and to withhold law enforcement action if appropriate. This is not affected by the provisions of the Controlled Substances Act. Existing case law (*Printz v. United States*) effectively prevents the federal government from requiring local officials to enforce federal law.

Effects of *Gonzales v. Raich* on Medical Marijuana Patients and Caregivers:

During the period of the preliminary injunction (2002-2005), medical marijuana was effectively controlled only by the provisions of SB420. Authorized users and their caregivers had reasonable assurances that they would not be subject to criminal

prosecution. Following the *Gonzales v. Raich* decision, it is now clear that both federal and state laws apply to the possession of medical marijuana, even though the provisions of those laws are inconsistent with each other. Authorized users and their caregivers are now clearly liable to federal prosecution for conduct that is clearly permitted under SB420.

Effect of *Gonzales v. Raich* on the Enforcement Practices of the Los Angeles County Sheriff's Department:

I have reviewed the enforcement practices of the Sheriff's Department regarding medical marijuana. This decision does not mandate any change to those practices.

I am troubled that the federal and state laws concerning medical marijuana remain in conflict. The Supreme Court has made it clear that the resolution of the conflict is now in the hands of our elected leadership. I urge you to present this issue to our senators and representatives so that it may be properly, and finally, resolved.

If you have any additional questions concerning this matter, please contact me or Chief Sandra Hutchens of the Office of Homeland Security at (323) 526-5755.

Sincerely,

A handwritten signature in cursive script that reads "Leroy D. Baca". The signature is written in dark ink and is positioned above the printed name and title.

LEROY D. BACA
SHERIFF



THOMAS L. GARTHWAITE, M.D.
Director and Chief Medical Officer

FRED LEAF
Chief Operating Officer

COUNTY OF LOS ANGELES
DEPARTMENT OF HEALTH SERVICES
313 N. Figueroa, Los Angeles, CA 90012
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July 27, 2005

TO: Each Supervisor

FROM: Thomas L. Garthwaite, M.D.
Director and Chief Medical Officer

Jonathan E. Fielding, M.D., M.P.H.
Director of Public Health and Health Officer

SUBJECT: **MEDICAL MARIJUANA**

On June 14, 2004, the Board approved a motion by Supervisor Yaroslavsky, directing the Department of Health Services, Sheriff's Department and County Counsel to report to the Board in two weeks on the implication of the Supreme Court Decision in Gonzales v. Raich for the implementation of Proposition 215 in Los Angeles County. This is a status report on developments since our July 1, 2005 report.

On July 6, 2005, the California Department of Health Services (CDHS) wrote to the county health officers notifying them that the CDHS had suspended its pilot Medical Marijuana identification card program pending clarification of legal questions by the State Attorney General.

On July 19, 2005 CDHS notified counties that the Attorney general had advised that operating the identification card program would not aid and abet marijuana users in committing a federal crime. Further, the CDHS reported that the Attorney General had affirmed that information received from applicants for the identification cards may be obtained by federal officials to identify them for prosecution, and thus, the CDHS will modify the identification card application to inform applicants of this. The CDHS requested pilot counties to resume processing applications and indicated that statewide phased implementation will begin August 1, 2005.

County Counsel has advised the Department that when the State finalizes the required administrative protocols, local health departments have a statutory duty to administer the program in accordance with the protocols. The Program requires that counties:

- Identify the governmental or nongovernmental organization that is designated to carry out Program responsibilities.
- Establish the county fee portion of application charges.
- Utilize medical marijuana program protocols developed by the CDHS.
- Provide, receive, and process applications for medical marijuana identification cards.
- Take an electronically transmissible photo of the applicant (patient and/or primary caregiver) that meets criteria prescribed in the state protocols.
- Collect application fees from applicants and transmit the State portion to the CDHS.
- Utilize the Web-based system to transmit a limited amount of application information (e.g., designation of patient or primary caregiver, his or her photo, county or its designee and phone number, card expiration date, etc.) to the CDHS' card production and data repository system.
- Receive state produced identification cards and issue them to the cardholders.
- Maintain various county records of the medical marijuana program.

We will analyze the projected staffing and necessary equipment to implement this program and determine its recommended organizational placement. We will seek information on the probable number of potential applications so that we can recommend a fee for the Board's approval to recover the program's cost, working with the Chief Administrative Officer and the Auditor-Controller. Within 60 days, we will file a Board letter for your agenda with an ordinance to establish the fee. In the meantime, if you have any questions or need additional information, please let either of us know.

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c: Chief Administrative Officer
County Counsel
Executive Officer, Board of Supervisors